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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

MARY HUMPHREY,

Plaintiff,

vs.

RICHARD J. BOUDREAU &
ASSOCIATES, LLC, LVNV FUNDING,
LLC,

Defendants.

Cause No. CV-08-17-BLG-RFC-CSO

Judge Carolyn S. Ostby

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMES NOW Plaintiff, Mary Humphrey, by and through her attorneys of record, Edwards, Frickle, Anner-Hughes & Culver and Pedersen Law Offices, P.C., and for her Complaint against Defendants, complains and alleges as follows:

1. This is an action for actual and statutory damages brought by Plaintiff Mary Humphrey, an individual consumer, against Defendants for violations of the Fair

Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

2. Plaintiff Mary Humphrey is a natural person residing in the State of Montana, Big Horn County.

3. Defendant Richard J. Boudreau & Associates, LLC, is a Massachusetts limited liability company with its principal offices located at 77 Main St., Andover, Massachusetts and 5 Industrial Way, Salem, New Hampshire, engaged in both the practice of law and the business of debt collection.

4. Defendant LVNV Funding, LLC, upon information and belief, is a Delaware limited liability company with its principal offices located at 625 Pilot Rd., Ste. 2, Las Vegas, Nevada and 15 S. Main St., Suite 700, Greenville, South Carolina, engaged in the business of junk debt purchasing and debt collection.

5. Defendants are engaged in the collection of debts from consumers using the mail and telephone. Defendants regularly attempt to collect consumer debts alleged to be due to another. Defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. § 1692a(6).

6. Jurisdiction over Ms. Humphrey's Fair Debt Collection Practices Act claim is proper in this Court pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331, 1337. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear and adjudicate Ms. Humphrey's state law causes of action.

7. Venue is proper in the Billings Division because Ms. Humphrey is a resident of Big Horn County, Montana and the pertinent facts occurred in Big Horn County, Montana.

8. Sears issued retail credit to Ms. Humphrey under account number 0652668363789. The alleged debt of \$1,439.25 was incurred on the account for personal, family or household services.

9. Upon information and belief, Defendant LVNV Funding, LLC purchased an assignment of Ms. Humphrey's alleged debt from Sears for pennies on the dollar.

10. By correspondence on the letterhead of Defendant Richard J. Boudreau & Associates, LLC, Defendants mailed a collection letter dated April 4, 2007, claiming that Ms. Humphrey owed Defendant LVNV Funding, LLC \$1,439.25 from the Sears account and offered to settle LVNV Funding's claims against Ms. Humphrey for \$1,151.00. Defendants represented that payment of the "full settlement amount" would be accepted on or before April 25, 2007. (A copy of the letter is attached hereto as Exhibit "1.")

11. Exhibit 1 was received by Ms. Humphrey at her residence in Hardin, Montana.

12. On or about April 10, 2007, Ms. Humphrey caused to be sent to Defendant Richard J. Boudreau & Associates, LLC a check for \$1,151 payable to LVNV Funding and which she had endorsed. (Check attached Exhibit "2.")

13. On or before April 25, 2007, Defendant Richard J. Boudreau & Associates, LLC cashed Ms. Humphrey's check. (Reverse side of check attached as Exhibit "2.")

14. Despite Ms. Humphrey's timely payment of the "full settlement" demand pursuant to the negotiated payoff between creditor and debtor, Defendant Richard J. Boudreau & Associates, LLC sent Ms. Humphrey another letter dated May 3, 2007, representing an outstanding "balance" owed on the account of \$296.91 and stating "[i]t has been more than 30 days since you received our fist (sic) letter, and we have not heard from you." The letter claimed that if further payment of the \$296.91 was not made, a review would be conducted to determine if legal action would be taken. (Letter attached as Exhibit "3.")

15. Exhibit 3 was received by Ms. Humphrey at her residence in Hardin, Montana.

COUNT I - BREACH OF CONTRACT

16. Ms. Humphrey repeats and re-alleges Paragraphs 1 through 15.

17. In connection with the agreement whereby Ms. Humphrey was to pay Defendants \$1,151.00 as "settlement in full of the above referenced account", Defendants promised that Ms. Humphrey would satisfy all of her obligations related to the account.

18. While Ms. Humphrey honored her obligation, Defendants did not.

19. In breach of the negotiated agreement, Defendants continued to attempt to collect on the account.

20. Ms. Humphrey has been damaged in that she has not been afforded the benefit of her negotiated arrangement with Defendants, she has been the subject of unnecessary and unwarranted collection efforts, she has been upset and aggravated by this ordeal, and has been victimized by Defendants' failure to exercise the slightest degree of care or attention to their business dealings.

**COUNT II - VIOLATION OF THE FAIR DEBT COLLECTION
PRACTICES ACT**

21. Ms. Humphrey repeats and re-alleges Paragraphs 1 through 20.

22. Defendants Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC are debt collectors as defined by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

23. Defendants Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC have each violated the FDCPA by their actions, including, but not limited to: (1) engaging in harassing and abusive conduct towards Ms. Humphrey; (2) making false representations to Ms. Humphrey as to the nature of the alleged debt; (3) failing to validate the debt; (4) using unfair and unconscionable means to collect a debt; (5) attempting to collect amounts not authorized by law and/or expressly waived pursuant to a settlement agreement; and (6) falsely representing that legal action could be taken against Ms. Humphrey by attorneys not licensed to practice law in the State of Montana.

24. As a result of Defendants', Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC, violations of the FDCPA, Ms. Humphrey has suffered and continues to suffer substantial injury and damage for which Defendants Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC are liable, jointly and severally, including but not limited to actual damages, statutory damages, costs, attorney's fees and punitive damages in an amount to be determined at trial.

COUNT II - VIOLATION OF MONTANA CONSUMER PROTECTION ACT

25. Ms. Humphrey repeats and re-alleges Paragraphs 1 through 24.

26. Ms. Humphrey is a consumer pursuant to the Montana Consumer Protection Act ("MCPA.") Mont. Code Ann. § 30-14-101 et. seq.

27. Defendants Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC engaged in unfair or deceptive acts or practices in the conduct of its commerce or trade, including but not limited to: (1) falsely representing the character, amount and legal status of Ms. Humphrey's alleged debt; (2) falsely representing that Ms. Humphrey's alleged debt would be "fully settled" by tender of \$1,151.00; (3) failing to validate the debt; and (4) falsely representing that legal action could be taken against Ms. Humphrey by attorneys not licensed to practice law in the State of Montana.

28. Ms. Humphrey has suffered and continues to suffer damages as a result of Defendants', Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC, unfair/deceptive acts and conduct towards her.

29. Ms. Humphrey is entitled to recover all compensatory and actual damages (including punitive damages), as well as treble damages, costs and attorney's fees as provided by the Montana Consumer Protection Act.

COUNT III - MISREPRESENTATION

30. Ms. Humphrey repeats and re-alleges Paragraphs 1 through 29.

31. Defendants Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC made representations to Ms. Humphrey as to the nature of the alleged debt, the ability to use legal process to enforce the alleged debt; and the ability to "settle" the alleged debt.

32. Defendants', Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC, representations to Ms. Humphrey were false and material, as they induced Ms. Humphrey to tender \$1,151.00 to them in an effort to avoid legal action which Defendants, in reality, had no ability to undertake.

33. Defendants Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC knew or should have known that their representations were false at the time they were made.

34. Ms. Humphrey was unaware of the falsity of Defendants', Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC, representations.

35. Ms. Humphrey had a right to rely upon Defendants', Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC, representations.

36. Defendants', Richard J. Boudreau & Associates, LLC and LVNV Funding, LLC, misrepresentations have directly and proximately caused Ms. Humphrey damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mary Humphrey respectfully requests that judgment be entered against Defendants for the all damages to which she is entitled to under Montana and Federal law for the following:

- A. Declaratory judgment that Defendants' conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Treble damages;
- E. Costs and reasonably attorney's fees;
- F. Punitive damages pursuant to Mont. Code Ann. § 27-1-221; and
- G. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all of the issues in this action.

Dated this 30th day of January, 2008.

EDWARDS, FRICKLE,
ANNER-HUGHES & CULVER

PEDERSEN LAW OFFICES, P.C.

By: /s/ Triel D. Culver
Triel D. Culver
Attorneys for Plaintiff